R.D. #0015-04
Clifton, NJ

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 22

X-L PLASTICS, INC.[1]
Employer

and **CASE 22-RC-12506**

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, LOCAL 641, AFL-CIO
Petitioner

and

UNITED PRODUCTION WORKERS UNION LOCAL 17-18
Intervenor

DECISION AND ORDER

I. INTRODUCTION:

The Petitioner filed a petition, amended at the hearing, under Section 9(c) of the National Labor Relations Act, seeking to represent a unit of all full-time and regular part-time production, maintenance, shipping, receiving and warehouse employees employed by the Employer at its Clifton, New Jersey facility. The Employer is a member of a multi-employer association known as Tri-State Commercial Association, Ltd., Food Paper Plastics and Metal Division ("the Association"). The Employer and

[1] The name of the Employer appears as amended at the hearing.

the Intervenor both assert that the petition should be dismissed as the collective bargaining agreement between the Intervenor and the Association bars the petition here. The Petitioner asserts that the collective bargaining agreement should not bar the petition as its express terms and conditions of employment are at variance with the terms and conditions actually enjoyed by employees of the Employer.

I find, for the reasons described below, that the collective bargaining agreement between the Intervenor and the Association is a bar to an election in this matter, and therefore, the petition must be dismissed.

Under Section 3(b) of the Act, I have the authority to hear and decide this matter on behalf of the National Labor Relations Board. Upon the entire record in this proceeding,[2] I find:

1. The hearing officer's rulings are free from prejudicial error and are hereby affirmed.

2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.[3]

3. The labor organizations involved claim to represent certain employees of the Employer.[4]

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[2] Briefs filed by the Petitioner and the Intervenor have been considered. No other briefs were filed.

[3] The Employer is engaged in the manufacture and non-retail sale of plastic products at its 220 Clifton Boulevard, Clifton, New Jersey facility, the only facility involved herein.

[4] The parties stipulated and I find that the Petitioner and the Intervenor are labor organizations within the meaning of Section 2(5) of the Act. The Intervenor was permitted to intervene based on its collective bargaining agreement, which covers the petitioned-for employees.

4. No question affecting commerce exists concerning the representation of certain employees of Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act, for the following reasons:

II. FACTS

The Employer is a producer of plastic garbage bags. It operates a facility in Clifton, New Jersey, employing approximately 65-75 employees. The Intervenor was certified as the collective bargaining representative for the employees of the Employer in June 1999. At that time, the Association had already entered into a multi-employer collective bargaining agreement with the Intervenor for the period March 19, 1999 through March 18, 2002. After certification of the Employer's bargaining unit, the Intervenor and the Employer negotiated local modifications to the Association contract, which modifications became effective September 1, 1999, and which were embodied in an unsigned two-page document entitled "Highlights of the Union Contract."

In or about March 2002, the Intervenor and the Association entered into a renewal multi-employer collective bargaining agreement, which on its face covers the Employer's machine operators, shipping/receiving employees and general helpers, and which is effective from March 19, 2002 through March 18, 2005. This collective bargaining agreement was executed by the parties on March 18, 2002, and bears the signatures of both the President and Secretary Treasurer of the Intervenor, and of both the Division Chairman and Executive Director of the Association.

Attached to the collective bargaining agreement is a two-page document, also unsigned, entitled "Highlights of the Union Contract" which the Intervenor's President, Douglas Isaacson, testified was a Rider summarizing the terms of the collective

bargaining agreement and reflecting additional terms and conditions negotiated specifically between the Intervenor and the Employer. The collective bargaining agreement, as modified by the Rider, covers substantial terms and conditions of employment including, but not limited to: recognition, union security, checkoff, trial period, hours of work, overtime, wages and wage increases, holidays, vacation, sick leave, bereavement leave, seniority, discipline, and grievance and arbitration procedures.

A review of the Rider reveals certain variations from the collective bargaining agreement. For example, while the collective bargaining agreement provides for a $.20/hour raise for all employees after a 60-day trial period, the Rider provides for a $.25/hour raise. The Rider substitutes the employees' birthday for Martin Luther King's birthday as a paid holiday. The Rider also alters, without diminishing, the schedule of paid vacation and sick time accrual. It is undisputed that the Rider was provided to employees contemporaneously with the signing of the collective bargaining agreement and that it has since been posted for review at the Employer's facility above the employees' time clock.

Isaacson testified that he negotiated the collective bargaining agreement with the Association on behalf of the Intervenor. Isaacson also testified that he negotiated the Rider with the Employer. Using bargaining notes presented to him at the hearing, he identified the Intervenor's negotiating committee for the Rider as including employees Manual Castro, Javier Lopez, German Mata, Juan Vaquero and an employee Aguillar, although only two employees - Juan Vaquero and Roberto - attended the one negotiating session that was held. He testified that the Intervenor and

the Employer agreed to certain local modifications at that one negotiating session, which are reflected in the Rider.

Isaacson testified that grievances arising at the Employer's facility are investigated and handled by Intervenor business agent Francisco Jarra, but that Isaacson has taken part in reviewing settlement agreements for about 15 grievances since 1999. Those grievances involved employee terminations, bathroom conditions, first aid kit access, ventilation in a work area, uniforms, earplugs and employees' vacation issues. While noting that the Intervenor has arbitrated grievances involving other employers of the Association whose employees it represents, Isaacson reported that no grievance with the Employer had ever gone to arbitration.

The Petitioner presented four employees of the Employer to testify about their terms and conditions of employment. All four employee witnesses testified that they were familiar with the Intervenor and that they knew they were entitled to the benefits of the collective bargaining agreement. They acknowledged using the posted Rider as a reference to guide them as to the terms of employment to which employees were entitled. They also each acknowledged receiving most of the benefits covered by the collective bargaining agreement, including raises after their trial period, annual raises as scheduled, paid holidays, vacations and sick days.

All four employee witnesses also acknowledged that Intervenor business agent Jarra (known as "Javier") was present at the facility at least once a month, as often as two to three times a month, as a representative of the Intervenor. They stated that Javier meets with the workers when he is there and is supposed to resolve problems employees have with the Employer. Indeed, more than one witness indicated that he

had raised issues with Javier and had recommended that other employees speak with Javier concerning their questions or problems, with varying degrees of success.

III. LEGAL ANALYSIS

The major objective of the Board's contract-bar doctrine is to achieve a reasonable balance between the frequently conflicting aims of industrial stability and freedom of employees' choice. This doctrine is intended to afford the contracting parties and the employees a reasonable period of stability in their relationship without interruption and at the same time to afford the employees the opportunity, at reasonable times, to change or eliminate their bargaining representative, if they wish to do so. The initial burden of proving that a contract is a bar is on the party asserting the doctrine. *Roosevelt Memorial Park*, 187 NLRB 517 (1970).

The Board's contract bar rules are clear. To serve as a bar to an election, a contract must meet certain basic requirements; these requirements are set out in the Board's decision in *Appalachian Shale Products Co.*, 121 NLRB 1160 (1958). The contract must be written, signed by the parties, cover substantial terms and conditions of employment for the petitioned-for unit, be of definite duration and not exceed three years. Id. Further, it must "state with adequate precision the course of the bargaining relationship" so "the parties can look to the actual terms and conditions of their contract for guidance in their day-to-day problems." Id. at 1163. Ratification by the union membership is not a necessity for upholding a contract as a bar.

Here, I find that Intervenor has met its initial burden by virtue of its signed written collective bargaining agreement with the Association, as modified, which clearly contains substantial terms and conditions of employment and is of a definite

three-year duration. It is undisputed that the two-page attachment of local modifications, though itself unsigned, was contemporaneously distributed to the employees as part of the parties' agreement governing the bargaining relationship. While containing certain variations in wages, vacations and holidays, it does not change the basic terms of employment covered by the Association agreement. Significantly, it did not purport to alter the duration of the parties' contract. Thus, on its face, the contract, including the local modifications, appears to bar the processing of the petition.

The Petitioner correctly observes that where the terms and conditions of employment set forth in a collective bargaining agreement have been substantially altered or abandoned in the absence of bargaining and by an Employer's unilateral action, the agreement will not be found to impart sufficient stability to the collective-bargaining relationship to warrant a finding of contract bar. *Raymond's Inc.*, 161 NLRB 838 (1966); see also *Western Roto Engravers*, 168 NLRB 986 (1968). However, isolated departures from the terms of the parties' written agreement will not suffice. The evidence must demonstrate that the parties' written agreement "has been abandoned or that the actual wages, hours, and working conditions at the facility are so at variance with the contract terms as to remove the bar quality from the contract." *Visitainer Corp.*, 237 NLRB 257 (1978).

The facts in *Visitainer* demonstrate that the failure to enforce certain provisions of a collective bargaining agreement will not necessarily remove a contract bar. There, half the employees were paid less than the contractual wage rate, while others were paid more; the shift differential went unpaid; holiday pay was at variance with the

contract; and the union failed to enforce the union security clause and to intercede in direct dealing between employees and the Employer. Still, despite these departures from the parties' written agreement, the Board found that the contract remained a bar and rejected the Regional Director's finding that the contract failed to chart the terms and conditions of employment with adequate precision. Id.

Here, we clearly do not have a situation where a union has abandoned the unit, become defunct or is unknown to the employees. Indeed, all four employee witnesses presented by the Petitioner acknowledged knowing they were represented by the Intervenor, covered by the collective bargaining agreement and entitled to the benefits set forth in the collective bargaining agreement and the Rider. More importantly, the record does not suggest that "the actual wages, hours, and working conditions at the facility are so at variance with the contract terms as to remove the bar quality from the contract." Id. Rather, the record is clear that there has been compliance with many of the contract terms and substantial compliance with others, including annual wage increases, paid holidays, vacations and sick days provided essentially consistent with the collective bargaining agreement.

Based on the above and the record as a whole, I find that the collective bargaining agreement the Intervenor has with the Association is a bar to an election in this matter as it charts with adequate precision the course of the relationship between the parties and is in substantial harmony with the actual terms and conditions of employment enjoyed by employees.[5]

[5] Based on my finding that the Collective Bargaining Agreement between the Association and the Intervenor is a bar to this petition, I find it unnecessary to address the issue, raised by Intervenor in its brief, that the multi-employer association unit is the only appropriate unit herein.

IV. ORDER

IT IS HEREBY ORDERED that the petition filed herein be, and it hereby is, dismissed.

V. RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, DC 20570-0001. The Board in Washington must receive this request by **September 17, 2004.**

Signed at Newark, New Jersey this 3d day of September, 2004.

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Gary T. Kendellen, Regional Director
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